

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on April 9, 2003, and the references cited therewith.

Claims 37-40 are amended and claims 35 and 36 are canceled. As a result, claims 1-34 and 37-41 are now pending in this application.

§102 Rejection of the Claims

Claims 1-7, 12-15, 18-23, 26-31, 34-38, and 41 were rejected under 35 USC § 102(e) as being anticipated by Corbefin et al. (U.S. Patent No. 6,269,243). This rejection is respectfully traversed, as a prima facie case of anticipation has not been established.

Each of the rejected independent and dependent claims recites: “a controller that controls RF emissions of the wireless phone to maintain the RF emissions below a predetermined level.” There is no such teaching in Corbefin et al. Corbefin et al. merely recites a “means of authority for compelling said radiocommunication means R to operate at very reduced power and for controlling the operation thereof. For this purpose, said means of authority 5 which are built into the central unit UC act, by way of the system ER2 and the antenna 3, on a power auto-matching system built in the standard manner into said radiocommunication means R.” Col. 4, lines 30-37. It is not clear to one skilled in the art exactly what is taught. There is no mention or suggestion of controlling RF emissions **based on a predetermined level** as claimed. While Corbefin et al. indicates that the operating power “is lowered in such a way as not to allow such interference” Col. 4, line 50, there is no teaching of exactly how that is done, and certainly, no mention of controlling to below a predetermined level.” as claimed in each rejected independent claim.

Thus, the method of control in Corbefin et al. appears to be a combination of the system IR2 and antenna 3. There is no mention of any type of controller that controls to a predetermined level as claimed. As at least one element of the independent claims is missing from the reference, a prima facie case of anticipation has not been established, and the rejection should be withdrawn.

With respect to claims 4, 22 and 30, the Examiner indicates that “to avoid any risk of electromagnetic interference with electronic systems on board the aircraft A (col. 3, line 57), it

is inherent that the level of RF emission created by radio communication means R and transponder 4 has to be below a predetermined level above which RF emission will cause interference.” Applicant respectfully disagrees because the Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

The Office Action does not assert that the allegedly inherent characteristic is necessary, let alone provide a basis in fact and/or technical reasoning. Applicant respectfully submits that “wherein the predetermined level is a level above which RF emissions will interfere with the aircraft systems” does not necessarily flow from Corbefin et al. because Corbefin et al. does not teach or suggest the existence of a predetermined level that is used for control of the power levels of cell phones. In fact, Corbefin et al. infers that it is a combination of ER2 and the antenna that reduce RF emissions. This teaches directly away from actively controlling based on a predetermined level.

§103 Rejection of the Claims

Claims 8-11, 16-17, 24-25, 32-33, and 39-40 were rejected under 35 USC § 103(a) as being unpatentable over Corbefin et al. in view of Coash (U.S. Patent No. 4,737,771). In addition to all the claims distinguishing from Corbefin et al. based on control to a predetermined level, these claims are also believed allowable as Coash and Corbefin et al. are not properly combinable.

The Office Action must provide specific, objective evidence of record for a finding of a suggestion or motivation to combine reference teachings and must explain the reasoning by which the evidence is deemed to support such a finding. *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). The Office Action stated “It would have been obvious to one of ordinary skill in the art at time the invention was made to include a security system as disclosed in Coash since it keeps other electronic devices on board the aircraft from malfunctioning and provides safer flights.” This is a mere conclusory statement of subjective belief, so Applicant

respectfully submits that the Office Action has not provided objective evidence for a suggestion or motivation to combine the references.

Analogous art is all art that is either in the field of technology of the claimed invention or deals with the same problem solved by the claimed invention even though outside the field of technology. *In re Wood*, 599 F.2d 1032, 202 USPQ 171 (CCPA 1979). Coash is directed to a security system, not a cell phone system. It actually jams carrier signals to avoid false alarms due to interference. It does not deal with the same problem solved by the claimed invention, and in fact, it's combination with Corefin et al. would simply created even more interference on the airplane.

Still further, the combination of the references does not teach the detection of “unsupported cellphone types” as claimed in claims 8, 16, 24, 32 and 39. Since at least one element is lacking from the combination, a *prima facie* case of obviousness has not been established, and the rejection should be withdrawn.

With regard to claims 9-11, 17, 25, 33 and 40, the Examiner states that “Corbefin et al. fail to teach transmitting and receiving cellular signals to and from wireless phone when the aircraft is on the ground.” Applicants agree, however, the assertion that this is “nothing other than normal cellular communications.” Is traversed. The Examiner is requested to provide an affidavit or reference to support such assertion.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 9 day of July, 2003.

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